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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

C&G CONTRACTORS, INC.,  
Plaintiff and Respondent,

v.

GOLDEN STATE DEVELOPERS, INC.,  
et al.

Defendants and Appellants.

A093679

(Alameda County  
Super. Ct. No. H-209141-7)

This appeal is related to the appeal of respondent C&G Contractors, Inc. (C&G) in *C&G Contractors, Inc. v. Golden State Developers, Inc., et al.*, A092878. In that case, C&G appealed from an order of the trial court denying its motion for attorney fees following a judgment entered pursuant to a statutory offer of compromise (Code Civ. Proc., § 998).<sup>1</sup> In the same order denying attorney fees, the trial court granted C&G's motion for costs of suit and denied appellants' motion to strike costs entirely. The court subsequently issued an order granting in part and denying in part appellants' motion to tax costs. In this appeal, appellants contend the court erred in allowing C&G to recover costs of suit and argue, in the alternative, their motion to tax costs should have been granted in its entirety. We conclude appellants waived the first argument by failing to file a timely notice of appeal from the order granting C&G's motion for costs and denying appellants'

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<sup>1</sup> All statutory references are to the Code of Civil Procedure.

motion to strike costs. Moreover, appellants failed to support their second argument by any legal argument or citation of authority. Accordingly, we affirm the cost award.

## **DISCUSSION**

### **I. Appellants Did Not Appeal Order Awarding Costs**

C&G filed suit against appellants for breach of contract and, before trial, accepted appellants' section 998 offer of compromise. In accordance with the terms of the section 998 offer, on July 26, 2000, the court entered judgment in favor of C&G and against appellants in the amount of \$51,100. After the entry of judgment, C&G filed a memorandum of costs and a motion for attorney fees and expenses of suit. Appellants opposed this motion and filed motions seeking to strike the memorandum of costs entirely or to tax costs in whole or in part. On September 28, 2000, following a hearing on the same day, the court issued an order granting C&G's motion for costs of suit but denying the motion insofar as it sought recovery of attorney fees. In the same order of September 28, 2000, the court granted appellants' motion to strike C&G's requested attorney fees but denied the motion to strike other costs of suit. The court continued the hearing on appellants' motion to tax costs until October 23, 2000.

On October 12, 2000, C&G filed a timely notice of appeal from the September 28, 2000 order. The superior court mailed a notice of this appeal to appellants on October 17, 2000. The record on appeal in this case, and the record in C&G's appeal (A092878), are devoid of any indication that appellants sought to raise an appellate challenge to the September 28 order. Appellants did not file their own notice of appeal from the September 28 order, nor did they file a cross appeal.

The trial court heard oral argument on appellants' motion to tax costs on October 23, 2000, and issued an order granting this motion in part and denying it in part on November 1, 2000. This order awarded C&G total costs of \$10,173.53. On December 22, 2000, appellants filed a notice of appeal from this November 1 order *only*. The notice of appeal states: "Defendants Golden State Developers, Inc. and The Housing Group—

Northern California hereby appeal from the Order on Defendants' Motion to Tax Costs of November 1, 2000."<sup>2</sup>

Thus, appellants did not file a timely appeal from the trial court's order of September 28, 2000, which awarded costs to C&G as the prevailing party pursuant to section 1032 and denied appellants' motion to strike costs. The present appeal from the order on appellants' motion to tax costs cannot be construed to encompass this earlier order for two reasons. First, and most obvious, appellants' notice of appeal clearly specifies that appeal is being taken from the court's November 1, 2000 order only. In that order, the court did not revisit appellants' earlier arguments (from the motion to strike costs) as to C&G's entitlement to costs given the wording of the section 998 offer. Rather, the November 1 order simply resolved disputes raised in the motion to tax costs concerning the propriety and reasonableness of *specific expenses* claimed by C&G. Second, and more important, appellants' December 22, 2000 notice of appeal was apparently filed beyond the jurisdictional time limit for an appeal from the September 28 order. Because C&G filed a timely notice of appeal from this order, any notice of appeal by appellants had to be filed within 60 days after the notice of entry of this order (Cal. Rules of Court, rule 2(a)) or 20 days after notification from the superior court clerk as to the filing of C&G's notice of appeal, whichever time period was greater. (Cal. Rules of Court, rule 3(c).) Appellants filed the present notice of appeal 85 days after entry of the September 28, 2000 order and 66 days after the superior court clerk mailed appellants notification of C&G's appeal.<sup>3</sup> Given their failure to file a timely notice of appeal from the order affirming C&G's right to recover costs of suit, we have no jurisdiction to consider appellants' belated challenge to this ruling. (*Van Beurden Ins. Services, Inc. v.*

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<sup>2</sup> Appellants failed to include this notice of appeal in their Appellants' Appendix, in violation of California Rules of Court, rule 5.1(b).

<sup>3</sup> A notice of entry of order for the September 28 order is missing from the records in this appeal and in A092878. However, Rule 2(a) provides that a file-stamped copy of the judgment or appealable order may be used in place of a document entitled "notice of entry" (Cal. Rules of Court, rule 2(a) & (d)), and the order in question was file-stamped by the superior court: "September 28, 2000."

*Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56 [“The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal.”].)

Appellants cite no authority that would permit us to consider their challenge to an earlier, non-appealed order. *Grant v. List & Lathrop* (1992) 2 Cal.App.4th 993 does not authorize a belated appeal regarding a party’s entitlement to costs. In that case, an appeal was timely taken from a judgment awarding fees and costs, and the appellate court simply held that a *second* appeal from the post-judgment cost order was not necessary because the judgment already made an express award of fees and costs. (*Id.* at p. 997.) Nor does *Ziello v. Superior Court* (1999) 75 Cal.App.4th 651 support appellants’ position. In *Ziello*, a mortgagee bank did not appeal from a judgment that left blank the amount of fees and costs to be awarded and which party was entitled to receive them. (*Id.* at pp. 653, 655.) The bank *did* appeal, however, from a post-judgment order that determined the mortgagor was the prevailing party, hence entitled to recover costs, and awarded specific amounts in costs and fees. (*Id.* at p. 655.) Because the bank timely appealed from the order determining the amount of costs *and which party had a right to recover them*, and because a cost order is separately appealable, the court denied a motion to dismiss the bank’s appeal. (*Ibid.*) The *Ziello* case does not help appellants because, unlike the bank in *Ziello*, appellants failed to appeal from the order that ruled C&G had a right to recover costs as the prevailing party.

## **II. No Argument Or Authority Regarding Motion To Tax Costs**

Assuming C&G had a right to recover its costs of suit, appellants argue the costs awarded were “greatly excessive” in amount. Appellants do not even bother to spell out their argument on this point, however, but merely “incorporate by reference their motion to tax costs, set forth in [the appellate record].” Appellants do no more than point this court to declarations submitted with their motion below and “respectfully submit that the Trial Court abused its discretion in failing to grant the motion to tax costs in its entirety or, alternatively, by failing to reduce the cost bill by each of the items set forth in the Chase Declarations . . . .” Appellants never explain how or why they believe the trial court

abused its discretion, nor do they clarify whether they contend an abuse of discretion occurred as to each separate item of disputed cost.

Contentions supported by neither argument nor authority are deemed abandoned. (*San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 559; *Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1090.) “A reviewing court need not consider alleged error when the appellant merely complains of it without pertinent argument. [Citation.]” (*Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.*, *supra*, at p. 1090.) We decline appellants’ invitation to examine the record in an unassisted search for error. “[I]t is not this court’s function to serve as . . . backup appellate counsel.” (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 546.) Because appellants have not shown any abuse of discretion by the trial court in awarding various costs to C&G, the cost award must stand undisturbed.

#### **DISPOSITION**

The order awarding costs of \$10,173.53 is affirmed. Appellants to bear the costs of this appeal.

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Parrilli, J.

We concur:

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McGuinness, P. J.

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Corrigan, J.